IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: O R D E R ::

Ghan Shyam Vs. D.C. Kaushal & Ors.

S.B. CIVIL WRIT PETITON NO.2277/2006.

Date of Order :: 22nd August 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Parihar for
Mr. Suresh Shrimali, for the appellant.

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Having heard learned counsel for the plaintiff-petitioner and having examined the material placed on record, this Court is clearly of opinion that the instant writ petition assailing the order dated 19.08.2003 (Annex.6) passed by the Civil Judge (Senior Division), Bhilwara, refusing the petitioner's application seeking amendment in the plaint for addition of the plea for fixation of standard rent at Rs.60,000/- per month and for addition of new ground of eviction of his reasonable and bonafide requirement, remains bereft of substance and does not merit admission.

It appears that the suit in question for eviction and for recovery of arrears of rent was filed way back in the year 1988. At the stage when the statement of DW-1 Anand

Prakash was incomplete, the plaintiff-petitioner moved application (Annex.4) under Order 6 Rule 17 and Section 151 CPC on 17.01.2003 and suggested that the area in question was going to acquire enhanced commercial value for developmental activities and widening of roads; that the plaintiff was 61 years of age and for his future prospects and augmentation of income, wanted to build a commercial complex in place of the disputed premises; and that the defendants could get other premises for running their school. The plaintiff further alleged that the defendants were enjoying the premises on a nominal rent of Rs.1,200/- per month whereas the area in question has acquired importance from business point of view and the disputed premises being about 10952 square feet in area, its present rent was not less than Rs.60,000/- per month and, therefore, the plaintiff was entitled to get the standard rent fixed at such rate. The plaintiff suggested that these were the subsequent events and prayed that such aspects may be permitted to be incorporated in the plaint by way of amendment in order to avoid multiplicity of proceedings.

The defendant contested the application and after hearing the parties, the learned trial court has proceeded to reject the application with the observations that in the suit as originally filed no ground regarding bonafide requirement was taken; and even when he got the plaint amended in the year

1993, the plaintiff did not ask for such amendment regarding the ground of reasonable and bonafide requirement. The learned trial court was of opinion that when the suit has registered so much progress that the plaintiff's evidence has already been concluded and the defendant's statement was incomplete, permitting such amendment would only be relegating the suit to the initial stage that would result in abnormal delay. The learned trial court also observed that by allowing the pleadings regarding standard rent now, the very nature of the suit would be altered; and again referring to the fact that the suit was filed way back in the month of January 1988 and the plaintiff's evidence has been completed, observed that by way of amendment the plaintiff wanted to alter the cause of action. The learned trial court also commented that the amendment regarding requirement was based on so many hypothetical suggestions about likelihood of the future development; and that in relation to the standard rent, a separate suit could be filed.

Assailing the order aforesaid, learned counsel for the petitioner has strenuously contended that the amendment in the pleadings is required to be permitted liberally; and, in the present case, particularly in order to avoid multiplicity of proceedings, the amendment as prayed for ought to have been permitted. With reference to the decision of the Hon'ble Supreme Court in the case of Raghu Thilak D.John Vs. S.

Rayappan & Ors.: 2001 WLC (SC) CIVIL 177, learned counsel contended that the learned trial court has been in error in rejecting the amendment on irrelevant considerations. The submissions are not well founded.

As noticed by the learned trial court, the suit in question was filed way back in the year 1988 and is pending at the stage of defendant's evidence. The plaintiff has, in the past, amended the plaint; and there appears no reason or justification for which the pleadings regarding bonafide requirement and standard rent could not have been taken earlier. Moreover, the plaintiff has sought to insert the pleadings regarding his requirement that are more in the nature of uncertainties and suppositions; and are hypothetical rather than of any material fact. The learned trial court has also rightly observed that the plaintiff could seek revision of rent by separate proceedings.

It is true that one of the relevant considerations while allowing amendment of pleadings is to avoid multiplicity of proceedings and to minimise litigation, but it is equally true, as noticed in the very decision relied upon the by the learned counsel for the petitioner, that amendment cannot be claimed as a matter of right and under all circumstances. In the circumstances of this case where the learned trial court has not considered it appropriate to permit amendment so as to take up the trial of the suit *de novo*, the considerations so

adopted by the learned trial court cannot be said to be wholly unwarranted; and rather appear to be perfectly justified in the circumstances of this case, looking to the nature of the suit filed by the plaintiff, looking to the nature of pleadings suggested for amendment, and looking to the stage of the suit filed in the year 1988.

The present one does not appear fit a case to be taken up for interference in writ jurisdiction of this Court.

The writ petition is, therefore, rejected.

(DINESH MAHESHWARI), J.

Mohan/